

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 01-0321**

**Sales Tax**

**Calendar Years 1998, 1999, and 2000**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

I. **Sales Tax** – Rental Accommodations

**Authority:** 45 IAC 2.2-4-8; IFB#41

Taxpayer protests the sales tax assessment.

II. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer is a bed and breakfast establishment. Taxpayer rents rooms with breakfast included in the price. Taxpayer also performs in-house catering and rents the facility for small gatherings. At audit, it was determined that the taxpayer failed to collect sales tax for accommodations rented.

Taxpayer opened its business in June 1994 and has submitted ST-103's with "zero" sales based upon advice from its CPA, which is the basis for the protest.

1. **Sales Tax** - Rental Accommodations

**DISCUSSION**

Taxpayer did not show for a hearing scheduled for Wednesday, December 19, 2001. The discussion follows taxpayer's protest letter dated November 27, 2001 and audit control no. 278186-08 dated August 31, 2001.

Taxpayer relied on the advice of its CPA. Taxpayer states it was unaware that it should have collected Indiana Sales Tax up until the time of the audit and believes the Department should consider the misinformation received from the CPA.

45 IAC 2.2-4-8 clearly states that Indiana sales tax applies to the rental of rooms, lodging, camping space, or other accommodations in Indiana furnished by any person engaged in the business of renting or furnishing such accommodations for periods of less than thirty (30) days. Sales Tax Information Bulletin #41 (4/98) further defines accommodations and includes bed and breakfast establishments. Further, the CPA was engaged by the taxpayer, and therefore, any error made by the CPA becomes the responsibility of the taxpayer.

### **FINDING**

Taxpayer's protest is denied.

## **II. Tax Administration – Penalty**

### **DISCUSSION**

Although the taxpayer did not specifically protest the penalty, the department addresses it based upon the content of taxpayer's protest letter.

Taxpayer states it did not collect and remit tax on taxable sales because its CPA advised it not to.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds reliance on the advice of a CPA does not insulate the taxpayer from the negligence penalty. Such factors must be considered in aggregate. In this case, taxpayer's failure to remit the tax was not the result of reasonable cause.

### **FINDING**

Taxpayer's protest is denied.